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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CITY OF UKIAH et al., Plaintiffs and Appellants, v. KEELY BOSLER, AS DIRECTOR, etc. et al., Defendants and Respondents; UKIAH UNIFIED SCHOOL DISTRICT et al., Real Parties in Interest and Respondents.	C078589 (Super. Ct. No. 34-2014-80001744-CU-WM-GDS)

This is another case arising out of the "Great Dissolution" of California's redevelopment agencies. (See *City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1463.) This enactment (Assem. Bill No. 26 (2011-2012 1st Ex. Sess.) enacted as Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 5 (Assembly Bill 1X 26)), which took effect on June 28, 2011, "barred any new obligations for redevelopment activity and provided a process to wind up the obligations of the nearly 400 redevelopment agencies then existing, in order that the ever-encroaching 'tax increment' share of property taxes paid to the redevelopment agencies could then be redistributed instead to the counties, cities,

special districts, and school districts otherwise entitled to these revenues." (*County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42, 45 (*County of Sonoma*); see also *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 246-247 (*Matosantos*).) In addition, Assembly Bill 1X 26 excluded agreements between redevelopment agencies and their sponsors in the definition of enforceable obligations, thereby invalidating such agreements. (*County of Sonoma*, at p. 49; Health & Saf. Code, § 34171, subd. (d)(2).)[1] A "successor agency," however, could "reenter" such an agreement with the approval of its "oversight board." (*Ibid*.; former § 34178, subd. (a).)

City of Ukiah (the City), in its capacity as the "successor agency" (Successor Agency) to the former Ukiah Redevelopment Agency of the City of Ukiah (RDA) (§§ 34171, subd. (j), 34173, 34177), reentered into a funding agreement between RDA and itself that was invalidated by Assembly Bill 1X 26, after it received authorization from its oversight board on June 13, 2012, to take such action. (Former § 34178, subd. (a), § 34180, subd. (h).) Under both the former and reentered agreements, RDA and Successor Agency agreed to "pay to the City (or pay to a third party on behalf of the City) a portion of the actual costs incurred by the City as necessary for the design, environmental review and construction of the Improvements [within the Redwood Business Park], in a total amount not to exceed SIX MILLION DOLLARS ($6,000,000)."

Petitioners and plaintiffs the City, Successor Agency, Daniel Peterson, and Kenneth Fowler (collectively plaintiffs) appeal from the trial court's ruling that the "reentered" funding agreement is not an "enforceable obligation" of a former redevelopment agency because it "changed the terms of the funding agreement" from those in the former agreement.[2] While both agreements required RDA and Successor

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[1] Undesignated statutory references are to the Health and Safety Code.

[2] Daniel Peterson and Kenneth Fowler are residents and business owners within RDA's project area who paid property tax and sales and use tax.

Agency to pay the City up to $6 million for the design, environmental review and construction of improvements within the Redwood Business Park, the former agreement required RDA to make an initial payment of roughly $3.3 million no later than March 9, 2011, while the reentered agreement required Successor Agency to make an initial payment of roughly $1.7 million on an unspecified date.

Plaintiffs contend that there are no material differences between the two agreements, both of which "pledge a total amount not to exceed $6 million for the design, environmental review, and construction of Public Improvements at Redwood Business Park." Plaintiffs also challenge the Department of Finance's (the Department) determination that proceeds from bonds issued by RDA cannot be used to fund the Redwood Business Park improvements because the bonds were issued after December 31, 2010. This issue was raised by plaintiffs below but was not addressed by the trial court.

We shall conclude that the reentered funding agreement is an "enforceable obligation." As we shall explain, the differences cited by the trial court and the Department are not material, and the City and Successor Agency could not have and were not required to enter into an agreement identical to the former agreement. Accordingly, we shall reverse the judgment. In light of our conclusion that the reentered agreement constitutes an enforceable obligation, we shall consider plaintiffs' claim regarding the use of bond proceeds to fund the Redwood Business Park improvements for the guidance of the trial court, the Department, and the parties. We shall conclude that section 34191.4, subdivision (c) (hereafter subdivision (c)), upon which the trial court based its determination, was amended in 2015, and as amended, no longer precludes a successor agency from using proceeds from bonds issued after December 31, 2010.[3]

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[3] We need not consider plaintiffs' contention that the trial court abused its discretion in sustaining the Department's objections to portions of the declaration of the City's finance

FACTUAL AND PROCEDURAL BACKGROUND

A. California Redevelopment Law

"In the aftermath of World War II, the Legislature authorized the formation of community redevelopment agencies in order to remediate urban decay. [Citations.] The Community Redevelopment Law 'was intended to help local governments revitalize blighted communities.' [Citations.] It has since become a principal instrument of economic development, mostly for cities, with nearly 400 redevelopment agencies now active in California." (*Matosantos, supra*, 53 Cal.4th at pp. 245-246.)

In the years that followed, a perception grew "that some redevelopment agencies were used as shams to divert property tax revenues that otherwise would fund general local governmental services, and legislative efforts were made to address these concerns." (*City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 298 (*City of Emeryville*), citing *Matosantos, supra*, 53 Cal.4th at pp. 247-248 and *Meaney v. Sacramento Housing & Redevelopment Agency* (1993) 13 Cal.App.4th 566, 579.)

"Responding to a declared state fiscal emergency, in the summer of 2011 the Legislature enacted two measures intended to stabilize school funding by reducing or eliminating the diversion of property tax revenues from school districts to the state's community redevelopment agencies." (*Matosantos, supra*, 53 Cal.4th at p. 241.) "Assembly Bill 1X 26 provided that successor agencies would '[e]xpeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.' (Health & Saf. Code, § 34177, subd. (h).) Each oversight board consists of members appointed as set forth by statute (§ 34179, subd. (a)), and has a fiduciary duty towards 'holders of enforceable obligations and the taxing entities that benefit from distributions of property tax' (§ 34179, subd. (i))

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director, Karen Scalabrini, because we do not rely on the excluded portions of Scalabrini's declaration in resolving the issues raised on appeal.

to carry out its duties, which include the duty to review specified actions by the successor agencies, including '[e]stablishment of the Recognized Obligation Payment Schedule.' (§ 34180, subd. (g)). The recognized obligation payment schedule (ROPS) is 'the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period . . . .' (§ 34171, subd. (h).) The successor agency has a duty to '[c]ontinue to make payments due for enforceable obligations.' (§ 34177, subd. (a).) Thus, to help ensure the orderly windup and dissolution of the redevelopment agencies, the ROPS lists what remaining enforceable obligations exist." (*City of Emeryville*, *supra*, 233 Cal.App.4th at pp. 298-299.) The entity that created the redevelopment agency was deemed the successor agency unless that entity specially opted out no later than January 13, 2012. (§§ 34171, subd. (j); 34173.)

"To ensure each ROPS is accurate, both [the Department] and the California State Controller . . . have the authority to require documentation of purported enforceable obligations, and they and any 'taxing entity' have authority to sue 'to prevent a violation under this part . . . .' (§ 34177, subd. (a)(2).) The Department also has authority to 'review an oversight board action taken pursuant to' Assembly Bill 1X 26. (§ 34179, subd. (h).)" (*City of Emeryville*, *supra*, 233 Cal.App.4th at p. 299.)

Of particular relevance here, under Assembly Bill 1X 26, section 34178, subdivision (a) provided in full as follows: "Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that *a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board*." (Italics added.) "[S]ection 34178 was intended to allow *prior* agreements to be *reentered* into, subject to oversight board approval, and possible

review by the Department." (*City of Emeryville, supra,* 233 Cal.App.4th at p. 304.) It provided successor agencies with "the authority to maintain existing redevelopment projects by means of reentering into agreements providing therefor." (*Ibid.*)

B. The Redwood Business Park Redevelopment Project

The City's redevelopment plan for the Ukiah redevelopment project area authorized RDA to pay for, develop, or construct any publicly-owned improvement that would benefit the project area. RDA adopted a five-year implementation plan that included infrastructure improvements at the Redwood Business Park, a potential major commercial-retail center within the project area. RDA expended over $3.3 million to assemble acreage previously owned by multiple landowners in order to facilitate development of the Redwood Business Park.

In January 2011, RDA entered into an exclusive negotiating agreement with Costco Wholesale Corporation (Costco) pursuant to which RDA agreed to enter a disposition and development agreement with Costco if Costco obtained the necessary entitlements to construct and open its store at the Redwood Business Park.

On March 2, 2011, in furtherance of RDA's agreement with Costco, the City and RDA entered into a "Funding Agreement" under which RDA agreed to fund the design, environmental review, and construction of public improvements within the Redwood Business Park in an amount not to exceed $6 million. Specifically, the agreement provided that "the Agency shall pay to the City (or pay to a third party on behalf of the City) a portion of the actual costs incurred by the City as necessary for the design, environmental review and construction of the Improvements, in a total amount not to exceed SIX MILLION DOLLARS ($6,000,000) (Agency Contribution). [¶] The Agency shall make such Agency Contribution to (or on behalf of) the City from any funds available to the Agency for such purpose, including the proceeds of any bonds issued by the Agency, loans and Tax Increments from the Redevelopment Project Area, at the Agency's sole discretion."

On March 8, 2011, the City and RDA entered into a "First Amended Funding Agreement," which required RDA to: "(1) by no later than March 9, 2011, pay to the City for the design, environmental review and construction of the Improvements $3,306,195 and (2) pay to the City (or pay to a third party on behalf of the City) a portion of the actual costs incurred by the City as necessary for the design, environmental review and construction of the Improvements, in a total amount not to exceed SIX MILLION DOLLARS ($6,000,000) (Agency Contribution). [¶] The Agency shall make such Agency Contribution to (or on behalf of) the City from any funds available to the Agency for such purpose, including the proceeds of any bonds issued by the Agency, loans and Tax Increments from the Redevelopment Project Area, at the Agency's sole discretion." That same day, March 8, 2011, RDA transferred $3,306,195 to the City; however, the State Controller later demanded that the money be returned.

On or about March 8, 2011, RDA also issued tax allocation bonds, series A, in the sum of $5,180,000. The bonds were issued pursuant to an indenture of trust, dated April 1, 2007, and a first supplement to indenture, dated March 1, 2011, by and between RDA and The Bank of New York Mellon Trust Company, N.A., as trustee. The bonds were issued in part to fund redevelopment activities benefitting the project area, including the "infrastructure improvements necessary for complete build-out of the [Redwood] Business Park."

Upon the adoption of Assembly Bill 1X 26 on June 28, 2011, the March 8, 2011 agreement was invalidated. (§ 34171, subd. (d)(2).) Effective February 1, 2012, RDA was dissolved (*Matosantos, supra,* 53 Cal.4th at p. 275), and the City became the successor agency to RDA (§§ 34171, subd. (j); 34173).

On June 13, 2012, Successor Agency's oversight board adopted a resolution authorizing Successor Agency to "re-enter the Funding Agreement with the City of Ukiah for public infrastructure improvement projects for the Redwood Business Park, originally dated March 8, 2011." (Former § 34178, subd. (a).) The agenda summary report

provided to the oversight board prior to the resolution's adoption advised the board that "the former Ukiah Redevelopment Agency has approximately $4.4 million in bond proceeds that have been dedicated in part to these improvements, $2.4 million in anticipated proceeds from the sale of 15 acres of land within the [Redwood Business Park] to Costco Wholesale and *$1,700,131.83 in funds on deposit with the City*." (Italics added.)

On June 20, 2012, the City and Successor Agency entered into a "Restated First Amended Funding Agreement," which required Successor Agency to: "(1) pay to the City for the design, environmental review and construction of the Improvements $1,700,131.83 and (2) pay to the City (or pay to a third party on behalf of the City) a portion of the actual costs incurred by the City as necessary for the design, environmental review and construction of the Improvements, in a total amount not to exceed SIX MILLION DOLLARS ($6,000,000) (Successor Agency Contribution). [¶] The Successor Agency shall make such Successor Agency Contribution to (or on behalf of) the City from any funds available to the Successor Agency for such purpose, including the proceeds of any bonds issued by the Agency, loans and Tax Increments from the Redevelopment Project Area, at the Successor Agency's sole discretion."

On August 1, 2012, Successor Agency adopted a resolution approving and adopting ROPS III, which listed the June 20, 2012 restated funding agreement as an enforceable obligation. During the ROPS III period (January 1 through June 30, 2013), Item No. 19, "Redwood Business Park Infrastructure Improvements/City-Agency Funding agreement," identified a total obligation of $6 million, with $1,962,656 to be paid from bond proceeds, $2,337,212 to be paid from property sale proceeds, and $1,700,132 to be paid from "Reserve."

Thereafter, the oversight board likewise adopted a resolution approving and adopting ROPS III. The "Redwood Business Park Infrastructure Improvements/City-Agency Funding agreement" was listed as Item No. 16 in the ROPS III approved and

adopted by the oversight board, and like the ROPS III approved and adopted by Successor Agency, it identified a total obligation of $6 million, with $1,962,656 to be paid from bond proceeds, and $1,700,131.32 to be paid from the "Reserve Balance."

Successor Agency submitted the ROPS III to the Department and the Mendocino County Auditor-Controller. The Department determined that Item No. 16 was not an enforceable obligation based on section 34171, subdivision (d)(2), which provides that " 'enforceable obligation' does not include any agreements, contracts, or arrangements between the city . . . that created the redevelopment agency and the former redevelopment agency." Successor Agency timely filed a request to meet and confer, and on December 18, 2012, after the parties met and conferred, the Department affirmed its rejection of Item No. 16 based on section 34171, subdivision (d)(2). In addition, the Department found that "to the extent the items were to be funded with bond proceeds, we note that pursuant to . . . section 34191.4[, subdivision] (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010 for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010. The bond proceeds requested for use were issued in March 2011. Therefore, the items are not enforceable obligations."

C. The Proceedings Below

On January 22, 2014, plaintiffs filed a verified petition for writ of mandate and complaint for injunctive and declaratory relief against Michael Cohen, in his capacity as former Director of the Department, and Meredith J. Ford, in her capacity as Auditor-Controller of the County of Mendocino, who were named as respondents and defendants. (Code Civ. Proc., § 1085.) The petition challenged the Department's determination that the June 20, 2012 Restated First Amended Funding Agreement is not an enforceable obligation, as well as the Department's finding that proceeds from bonds issued by RDA

in 2011 could not be used to fund the Redwood Business Park improvements. Plaintiffs sought declarations regarding the rights and obligations of the parties under the June 20, 2012 agreement, as well as the use of bond proceeds to pay for obligations under the same.

The trial court denied the petition for writ of mandate and dismissed the complaint for declaratory and injunctive relief. Contrary to the Department, the trial court found that the City and Successor Agency had the authority to reenter the March 8, 2011 funding agreement with the oversight board's approval.[4] The trial court concluded, however, that the City and Successor Agency failed to do so because the June 20, 2012 agreement "contained different terms from the March 8, 2011 agreement, which was the agreement the Oversight Board expressly approved the Successor Agency to re-enter into." The trial court explained, "The March 8, 2011 agreement provided that the Former RDA would pay $3,306,195 to the City by March 9, 2011," and "[t]he June 20, 2012 agreement provided that the initial amount to be paid to the City for design, environmental review and construction was $1,700,131.83, and did not provide for a payment deadline." "[A]s the June 20, 2012 agreement never received Oversight Board approval as required by section 34178[, subdivision] (a), it is not a valid agreement."

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[4] Consistent with the trial court's finding in this case, in March 2015 (two months after the trial court issued its decision in this case), this court rejected the Department's argument that reentered agreements are not enforceable obligations because the definition of an "enforceable obligation" set forth in section 34171, subdivision (d)(2) excludes agreements between redevelopment agencies and their sponsors. (*County of Sonoma, supra,* 235 Cal.App.4th at p. 45.) We found, "[t]he 2011 version of sections 34178, subdivision (a) and 34180, subdivision (h) . . . unambiguously authorized a successor agency to request approval of a reentry agreement, and an oversight board to grant the request." (*Id.* at p. 48.) "[A]uthorization of reentry agreements is a rational escape hatch which allows oversight boards composed of the taxing entities that are otherwise entitled to the benefits of the law to determine that *certain* of the sponsor-former redevelopment agency agreements present sufficient countywide benefit to them such that it is in their best interests to approve reentry." (*Id.* at p. 50.)

Having determined that "there is no enforceable obligation," the trial court concluded that "there is no need to address any of the parties' remaining arguments," including plaintiffs' argument that the Department erred in finding that proceeds from bonds issued by RDA in 2011 could not be used to fund the Redwood Business Park improvements because they were issued after December 31, 2010.

DISCUSSION

I

Standard of Review

Resolution of the issues raised on appeal requires interpretation of both the dissolution law and the funding agreements. "[W]here the issue is one of statutory construction or contract interpretation, and the evidence is not in dispute, the de novo standard of review applies [citation]." (*People v. International Fidelity Ins. Co.* (2010) 185 Cal.App.4th 1391, 1395; see also *City of Petaluma v. Cohen* (2015) 238 Cal.App.4th 1430, 1438-1439.) Although a traditional writ of mandate ordinarily reviews administrative actions for abuse of discretion, at issue here is whether the Department correctly interpreted its governing statutes and the funding agreements, which is subject to our de novo review without deference to the Department. (*City of Tracy v. Cohen* (2016) 3 Cal.App.5th 852, 860; but see *City of Brentwood v. Campbell* (2015) 237 Cal.App.4th 488, 500 [we may accord at least weak deference to agency's interpretation of its governing statutes where its expertise gives it superior qualifications to do so, but interpretation is ultimately subject to our de novo review].)

II

The June 20, 2012 Agreement Is an Enforceable Obligation

Plaintiffs contend that the trial court erred in concluding that the June 20, 2012 Restated First Amended Funding Agreement is not an enforceable obligation. We agree.

The trial court found that "[t]he Restated First Amended Funding Agreement contained different terms from the March 8, 2011 agreement, which was the agreement

the Oversight Board expressly approved the Successor Agency to re-enter into. Consequently, the Restated agreement was not entered into with oversight board approval." In particular, the trial court noted that "[t]he March 8, 2011 agreement provided that [RDA] would pay $3,306,195 to the City by March 9, 2011," while the June 20, 2012 agreement "provided that the initial amount to be paid to the City for design, environmental review and construction was $1,700,131.83, and did not provide for a payment deadline." The trial court rejected plaintiffs' claim that the revisions were immaterial, reasoning that "[s]ection 34178[, subdivision] (a) does not provide that an oversight board need only approve the material terms, but instead requires that reentered agreements are valid upon approval of the oversight board."

It is undisputed that Successor Agency had the authority to reenter into the March 8, 2011 agreement, subject to the approval of its oversight board, which it obtained on June 13, 2012. (Former § 34178, subd. (a); *City of Emeryville*, *supra*, 233 Cal.App.4th at p. 304.) The parties dispute whether the City and Successor Agency properly reentered into the March 8, 2011 agreement on June 20, 2012, when it entered the restated funding agreement. Plaintiffs assert that the City and RDA successfully reentered into the March 8, 2011 agreement on June 20, 2012, because "the terms of [the March 8, 2011 and June 20, 2012] agreements were the same in all material respects," namely both "entailed a $6,000,000 maximum funding commitment . . . for the Redwood Business Park improvements," and "the differences between the agreements [are] not material." In support of their assertion that the differences were not material, plaintiffs offered evidence that the difference in the initial payment amount was a function of the amount of funds on reserve, which had decreased significantly since March 8, 2011. In particular, plaintiffs submitted evidence that "[t]he $1.7 million figure in the June 20, 2012 Agreement reflected the funds that the Successor Agency had in reserve at that time." The Department argues that the City and RDA "entered into a different, Restated Agreement, which the Dissolution Law does not allow, and which the Oversight Board

did not authorize." Like the trial court, the Department points to *differences* in the amount and date of the initial payment.

In *City of Emeryville,* the Department argued that the reentered agreements at issue in that case contained " 'new and different terms,' " and thus, "were not merely reentered but *different* agreements." (*City of Emeryville, supra,* 233 Cal.App.4th at p. 302.) In rejecting the Department's argument, this court explained that differences must be *material* and that the Department failed to offer any *material* differences. (*Ibid.*) Here, the Department contends in conclusory fashion that the terms in question are material but fails to provide any evidence or argument in support of its position or that call into question plaintiffs' claim that the difference in the initial payment amount was a function of the amount of funds on reserve.

As a practical matter, it would have been impossible for the City and Successor Agency to enter into an agreement with the exact same terms as the March 8, 2011 agreement. Under the March 8, 2011 agreement, RDA was required to make the initial payment on March 9, 2011. That day had long passed by the time the City and Successor Agency entered the June 20, 2012 agreement. Nor is there any evidence that Successor Agency could have made an initial payment of $3,306,195 in June 2012, as provided in the March 8, 2011 agreement, when it had "approximately. . . *$1,700,131.83 in funds on deposit with the City*."

Because there is no material difference between the March 8, 2011 and June 20, 2012 funding agreements, the trial court erred in concluding that the June 20, 2012 agreement is not an enforceable obligation.[5]

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[5] Given our conclusion, we need not address plaintiffs' alternative argument that "if the June 20, 2012 Agreement does not qualify as an enforceable obligation, the Successor Agency should be deemed to have stepped into the shoes of the RDA with respect to the March 8, 2011 Agreement."

III

Successor Agency Is Not Precluded from Using Bond Proceeds to Fund the Redwood Business Park Improvements

Plaintiffs next contend that the Department's "determination that the 2011 Bonds cannot be used to fund the Redwood Business Park improvements is incorrect and must be reversed." The trial court did not reach this issue because it determined that the June 20, 2012 agreement was not an enforceable obligation. As detailed above, we have concluded otherwise and thus shall address the issue for the guidance of the trial court, the Department, and the parties.

After concluding that the June 20, 2012 agreement did not constitute an enforceable obligation, the Department continued: "Furthermore, to the extent [the Redwood Business Park infrastructure improvements] were to be funded with bond proceeds, we note that pursuant to . . . section 34191.4[, subdivision] (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010 for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010. The bond proceeds requested were issued in March 2011." While the Department's conclusion was correct when it was made (*City of Galt v. Cohen* (2017) 12 Cal.App.5th 367, 377 (*City of Galt*)), the Legislature subsequently amended subdivision (c) to allow successor agencies to use "[b]ond proceeds derived from bonds issued on or after January 1, 2011" in certain specified circumstances.

At the time the Department made its decision in December 2012, subdivision (c) provided:

> (1) *Bond proceeds derived from bonds issued on or before December 31, 2010, shall be used for the purposes for which the bonds were sold.*

(2)

> (A) Notwithstanding Section 34177.3 or any other conflicting provision of law, bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants. Enforceable obligations may be satisfied by the creation of reserves for projects that are the subject of the enforceable obligation and that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects. An expenditure made pursuant to this paragraph shall constitute the creation of excess bond proceeds obligations to be paid from the excess proceeds. Excess bond proceeds obligations shall be listed separately on the Recognized Obligation Payment Schedule submitted by the successor agency.
>
> (B) If remaining bond proceeds cannot be spent in a manner consistent with the bond covenants pursuant to subparagraph (A), the proceeds shall be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation. (§ 34191.4, former subd. (c), italics added; added by Stats. 2012, ch. 26, § 35.)

While this case was pending on appeal, this court decided *City of Galt*, which held that the implication of section 34191.4, former subdivision (c)--that proceeds from bonds issued on or before December 31, 2010, shall be used for the purposes for which the bonds were sold--"is that proceeds from bonds issued *after December 31, 2010*, are not to be used for the purposes for which the bonds were issued." (*City of Galt*, *supra*, 12 Cal.App.5th at p. 377.) We directed the parties to file supplemental letter briefs addressing the impact of that decision on this case, given that the bonds at issue here were issued in March 2011.

The Department responded that *City of Galt* foreclosed plaintiffs' claim that the Department erred in determining that the 2011 bonds could not be used to fund the Redwood Business Park improvements, while plaintiffs argued that under amendments made in 2015 to subdivision (c), "it is <u>possible</u> that a portion of the 2011 bond proceeds would be available to be used for the Redwood Business Park."

As amended in 2015, subdivision (c) provides in pertinent part:

(1)

> (A) Notwithstanding Section 34177.3 or any other conflicting provision of law, bond proceeds derived from bonds issued on or before December 31, 2010, in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants. Enforceable obligations may be satisfied by the creation of reserves for projects that are the subject of the enforceable obligation and that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects. An expenditure made pursuant to this paragraph shall constitute the creation of excess bond proceeds obligations to be paid from the excess proceeds. Excess bond proceeds obligations shall be listed separately on the Recognized Obligation Payment Schedule submitted by the successor agency. The expenditure of bond proceeds described in this subparagraph pursuant to an excess bond proceeds obligation shall only require the approval by the oversight board of the successor agency.
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> (B) If remaining bond proceeds derived from bonds issued on or before December 31, 2010, cannot be spent in a manner consistent with the bond covenants pursuant to subparagraph (A), the proceeds shall be used at the earliest date permissible under the applicable bond covenants to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

(2) *Bond proceeds derived from bonds issued on or after January 1, 2011, in excess of the amounts needed to satisfy approved enforceable obligations, shall be used in a manner consistent with the original bond covenants, subject to the following provisions*:

> *(A) No more than 5 percent of the proceeds derived from the bonds may be expended, unless the successor agency meets the criteria specified in subparagraph (B).*
>
> *(B) If the successor agency has an approved Last and Final Recognized Obligation Payment Schedule pursuant to Section 34191.6, the agency may expend no more than 20 percent of*

> *the proceeds derived from the bonds, subject to the following adjustments:*
>
> [¶] . . . [¶]
>
> *(iii) If the bonds were issued during the period of March 1, 2011, to March 31, 2011, inclusive, the successor agency may expend an additional 15 percent of the proceeds derived from the bonds, for a total authorized expenditure of no more than 35 percent.* (§ 34191.4, subd. (c), italics added, as amended by Stats. 2015, ch. 325, § 21.)

Unlike former subdivision (c), as interpreted by this court in *City of Galt, supra,* 12 Cal.App.5th at page 377, the amended version of subdivision (c) does not prohibit the use of bond proceeds derived from bonds issued on or before December 31, 2010, for the purposes for which the bonds were sold. To the contrary, subdivision (c)(2) sets forth the circumstances under which portions of proceeds derived from bonds issued on or after January 2011 may be used. Applying subdivision (c)(2) to this case, the Department's determination that the requested bond proceeds could not be used to fund the Redwood Business Park infrastructure improvements because the proceeds were derived from bonds issued after December 30, 2010, is no longer correct. If certain conditions are met, such proceeds may be used in a manner consistent with the original bond covenants. (§ 34191.4, subd. (c)(2).) We express no opinion as to whether such conditions exist here. We find only that the use of the requested proceeds is not barred simply because they were derived from bonds issued after December 30, 2010, as determined by the Department.

Finally, while subdivision (c) was amended after the Department made its determination in this case, it is clear that the Legislature intended that the amended version apply to cases, such as this. As this court previously held in *City of Galt,* the "specific reference to the date of ***bond*** issuance in the statute evinces the Legislature's intent concerning the application of the provision, whether retroactive or prospective."

(*City of Galt, supra,* 12 Cal.App.5th at p. 378, italics & underscoring added, citing *City of Emeryville, supra,* 233 Cal.App.4th at p. 310.) The same is true here. The specific reference to the date of the bond issuance evinces the Legislature's intent that section 34191.4, subdivision (c)(2) apply retroactively.

DISPOSITION

The judgment is reversed with instructions to the trial court to vacate its order denying plaintiffs' petition for writ of mandate and dismissing the complaint for declaratory and injunctive relief and to enter a new order granting the writ petition consistent with this opinion and granting such other relief as the court may deem appropriate. The City shall recover costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(2).)

/s/
Blease, Acting P. J.

We concur:

/s/
Murray, J.

/s/
Duarte, J.